

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 454**

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**Introduced by Senator Allen**

February 25, 2015

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An act to ~~amend Section 13399 of the Water~~ add Section 3113 to the *Public Resources Code*, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 454, as amended, Allen. Water quality: ~~minor violations: oil and gas: exempt aquifer.~~

*Existing federal law prohibits certain oil and gas well activities that affect underground sources of drinking water unless those sources are located in an exempt aquifer. Existing federal law authorizes a state delegated with the responsibility of regulating certain wells to propose that an aquifer or a portion of an aquifer be an exempt aquifer and authorizes the United States Environmental Protection Agency to approve the proposal if the aquifer or a portion of the aquifer meets certain criteria. Under existing federal law, the authority to regulate those wells in California is delegated to the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation.*

*This bill would prohibit the division from submitting a proposal for an aquifer exemption to the United States Environmental Protection Agency unless the division and the State Water Resources Control Board concur in writing that the aquifer meets specified conditions.*

~~The Porter-Cologne Water Quality Control Act authorizes the State Water Resources Control Board and the California regional water quality control boards to conduct inspections for violations of specified law. The act requires the state board and the regional boards to determine~~

~~the types of violations that are minor violations and requires the state board to adopt regulations or state policy for water quality, as prescribed.~~

~~This bill would make nonsubstantive changes to the provision relating to minor violations.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3113 is added to the Public Resources  
2     Code, to read:

3     3113. The division shall not submit a proposal for an aquifer  
4     exemption to the United States Environmental Protection Agency  
5     under the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et  
6     seq.) and regulations implementing that act unless the division  
7     and the State Water Resources Control Board concur in writing  
8     that the aquifer meets either of the following conditions:

9     (a) The division determines that the aquifer is hydrocarbon  
10    bearing, as described in Section 146.4(b)(1) of Title 40 of the Code  
11    of Federal Regulations, and either of the following additional  
12    determinations is made:

13    (1) The division and the State Water Resources Control Board  
14    determine that the intended injection zone is geologically and  
15    hydrogeologically isolated from any zone containing waters that  
16    may have a beneficial use.

17    (2) The State Water Resources Control Board determines that  
18    the intended injection zone contains waters with potential beneficial  
19    uses and the fluids to be injected into the zone will not impact those  
20    beneficial uses.

21    (b) The division determines that the aquifer is nonhydrocarbon  
22    bearing and the aquifer meets all of the following conditions:

23    (1) The aquifer meets the criteria in Section 146.4(a) to (c),  
24    inclusive, of Title 40 of the Code of Federal Regulations.

25    (2) The total dissolved solids content of the water in the aquifer  
26    is greater than 3,000 milligrams per liter.

27    (3) The division and the State Water Resources Control Board  
28    determine that the intended injection zone is geologically and  
29    hydrogeologically isolated from any zone containing waters that  
30    may have a beneficial use.

1     (4) *The State Water Resources Control Board determines in*  
2 *writing to the division and posts on the board's Internet Web site*  
3 *in a public and readily accessible location that the injection of*  
4 *fluids into the aquifer would not contaminate a source of water*  
5 *that currently has, or could in the future have, a beneficial use,*  
6 *subject to the following:*

7     (A) *For an aquifer situated at a depth or location that makes*  
8 *recovery of the water currently technologically impractical or an*  
9 *aquifer that is so contaminated that it would be economically or*  
10 *technologically impractical to render that water fit for human*  
11 *consumption or other beneficial use, the board shall consider and*  
12 *make a written determination regarding the potential for future*  
13 *technology to make the aquifer viable as a water source.*

14     (B) *The board shall consider and make a written determination*  
15 *regarding the state's need to identify and develop new sources of*  
16 *water and how that need might affect the viability of a currently*  
17 *contaminated aquifer.*

18     (5) *If the aquifer contains water that is currently or potentially*  
19 *limited in its beneficial use due to existing contamination, the State*  
20 *Water Resources Control Board determines that the injection of*  
21 *fluids into the aquifer would not impair the limited current or*  
22 *potential beneficial use of the waters.*

23     SECTION 1. ~~Section 13399 of the Water Code is amended to~~  
24 ~~read:~~

25     ~~13399. (a) The Legislature hereby finds and declares that the~~  
26 ~~purpose of this chapter is to establish an enforcement policy for~~  
27 ~~violations of this division that the enforcement agency finds are~~  
28 ~~minor when the danger they pose to, or the potential that they have~~  
29 ~~for endangering, human health, safety, or welfare or the~~  
30 ~~environment are taken into account.~~

31     ~~(b) It is the intent of the Legislature in enacting this chapter to~~  
32 ~~provide a more resource-efficient enforcement mechanism, faster~~  
33 ~~compliance times, and the creation of a productive and cooperative~~  
34 ~~working relationship between the state board, the regional boards,~~  
35 ~~and the regulated community while maintaining protection of~~  
36 ~~human health and safety and the environment.~~

37     ~~(c) This chapter applies solely to the actions of the state board~~  
38 ~~and the regional boards in administering this division and has no~~  
39 ~~application to the administrative enforcement actions of other~~  
40 ~~public agencies.~~

~~(d) The state board and each regional board shall implement this chapter by determining the types of violations of this division, or of the regulations, rules, standards, orders, permit conditions, or other requirements adopted pursuant to this division that the state board or the regional board finds are minor violations in accordance with subdivisions (e) and (f). The state board shall implement this chapter through adoption of regulations or state policy for water quality control pursuant to Article 3 (commencing with Section 13140) of Chapter 3.~~

~~(e) In determining the types of violations that are minor violations, the state board or regional board shall consider all of the following factors:~~

- ~~(1) The magnitude of the violation.~~
- ~~(2) The scope of the violation.~~
- ~~(3) The severity of the violation.~~
- ~~(4) The degree to which a violation puts human health, safety, or welfare or the environment into jeopardy.~~
- ~~(5) The degree to which a violation could contribute to the failure to accomplish an important goal or program objective as established by this division.~~

~~(6) The degree to which a violation may make it difficult to determine if the violator is in compliance with other requirements of this division.~~

~~(f) For purposes of this chapter, a minor violation of this division shall not include any of the following:~~

- ~~(1) A knowing, willful, or intentional violation of this division.~~
- ~~(2) A violation of this division that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.~~
- ~~(3) A violation that is a chronic violation or that is committed by a recalcitrant violator.~~

~~(g) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of paragraph (3) of subdivision (f), the state board or regional board shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this division or the requirements adopted pursuant to this division.~~